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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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11 UNITED STATES OF AMERICA,	}	2:09-CR-078-JCM-(RJJ)
12 Plaintiff,	}	
13 vs.	}	GOVERNMENT'S THIRD
14 SAMUEL DAVIS, and,	}	SUPPLEMENTAL NOTICE OF
15 SHAWN RICE,	}	INTENT TO USE EVIDENCE OF
	}	OTHER CRIMES, WRONGS OR
16 <u>Defendants.</u>	}	ACTS

17 COMES NOW the United States of America, by and through DANIEL G.
18 BOGDEN, United States Attorney, and J. Gregory Damm, Assistant United States
19 Attorney and hereby gives notice that the government intends to use the following
20 evidence in the trial of this matter.

21 NOTICE

22 Pursuant to Fed.R.Evid. 404(b), the prosecution is providing reasonable notice
23 in advance of trial of the general nature of any such evidence it intends to introduce at
24 trial of other crimes, wrongs or acts allegedly committed by the defendants. Without
25 conceding that the following evidence is governed by Fed.R.Evid. 404(b), and
26 reserving the right to supplement this notice with additional notices, the government
hereby notifies the defendants that it intends to introduce the following evidence:

1 On October 26, 2009, defendant SHAWN RICE was allowed to represent
2 himself and his standby counsel was discharged. (CR # 86). Thereafter defendant
3 SHAWN RICE filed a number of motions totally unrelated to the instant criminal case.
4 On February 12, 2010, the government filed a motion to revoke defendant SHAWN
5 RICE's self-representation status. (CR # 124). This court set a hearing on the
6 government's motion for March 8, 2010. (CR # 128). Defendant SHAWN RICE was
7 notified of this hearing in several ways including by certified mail. (CR # 128).

8 On March 8, 2010, defendant SHAWN RICE failed to appear at the hearing to
9 consider the government's motion to revoke his self-representation status. (CR # 133).
10 This court continued this hearing to give defendant SHAWN RICE another opportunity
11 to appear. On March 9, 2010, defendant SHAWN RICE again failed to appear at the
12 hearing to consider the government's motion to revoke his self-representation status.
13 (CR # 135). At this time this court directed Pretrial Services and the United States
14 Attorneys Office to submit a petition to revoke defendant SHAWN RICE's pretrial
15 release due to his two failures to appear for court ordered hearings. Failures to appear
16 are felonies in violation of Title 18, United States Code, §3146.

17 Defendant SHAWN RICE has fled and absconded from the jurisdiction of the
18 United States District Court for the District of Nevada. Defendant SHAWN RICE
19 absconded from the supervision of Pretrial Services as early as February 18, 2010, and
20 currently remains a fugitive from justice. "Evidence of flight is generally admissible
21 as evidence of consciousness of guilt and of guilt itself." *United States v. Harris*, 792
22 F.2d 866, 869 (9th Cir.1986) (*citations omitted*). Since "flight" is essentially an
23 admission by conduct, its probative value as circumstantial evidence depends upon the
24 degree of confidence with which four inferences can be drawn:

25 (1) from the defendant's behavior to flight; (2) from flight to
26 consciousness of guilt; (3) from consciousness of guilt to consciousness
of guilt concerning the crime charged; and (4) from consciousness of guilt

1 concerning the crime charged to actual guilt of the crime charged.
2 *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir.1977); *see also United States v.*
3 *Silverman*, 861 F.2d 571, 581 (9th Cir.1988).

4 CONCLUSION

5 WHEREFORE, the United States respectfully gives notice of its intent to use the
6 above-recited evidence.

7 DATED this 28th day of May, 2010.

8 Respectfully submitted,

9 DANIEL G. BOGDEN
10 United States Attorney

11 /s/ J. Gregory Damm

12 J. GREGORY DAMM
13 Assistant United States Attorney
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Certificate of Service

I, J. Gregory Damm, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S THIRD SUPPLEMENTAL NOTICE OF INTENT TO USE EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS, upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S THIRD SUPPLEMENTAL NOTICE OF INTENT TO USE EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS and mailing a copy postage prepaid to Shawn Talbot Rice, P.O. Box 700, #81, Ash Fork, Arizona 86320.

Dated: May 28, 2010

/s/ Judith Richardson
Legal Assistant to J. Gregory Damm
Assistant United States Attorney
District of Nevada